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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/631,360

07/31/2003

Theodore E. Jones JR.

NBI-866A

1927

23290

7590

10/10/2006

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EXAMINER

ADAMS, GREGORY W

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/631,360	JONES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gregory W. Adams	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21,22,24-33 and 35-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21,22,24-33 and 35-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Change of Examiner***

This application has been transferred to Examiner Gregory W. Adams.

***Status of Application***

The paper filed February 13, 2006 has been treated as a request for reconsideration. Applicant is correct that the action mailed July 5, 2005 treated the wrong set of claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 21-22, 24-33 & 35-49 are rejected under 35 U.S.C. 102(a) as being anticipated by Loewenthal et al. (US 6,189,678).

With respect to claims 21, 26-33 & 36-40, Loewenthal et al. disclose a method for continuously packaging or sorting fragile articles having varying thicknesses in a stack comprising:

feeding a plurality of articles (indicated generally as 10) having varying thicknesses from an article infeed to one of a plurality of stripping devices, e.g. slug, 32', 33;

Art Unit: 3652

removing a set number of articles in the form of a stack by each stripping device wherein a proportional shifter 18 is coupled to each stripping device;

measuring a stack height (C6/L1-10) of said set number of articles with an article gauge 52, 59 attached to each proportional shifter to determine any change in stack height; and

adjusting each proportional shifter for a change in the stack height in proportion to the set number of articles removed without interrupting a flow of articles. (C5/L65-67)

With respect to claim 22, Loewenthal et al. disclose switching each said proportional shifter between two different pre-determined numbers of fragile articles to be removed by each stripping device. C6/L6.

With respect to claims 24, 25, 35, Loewenthal et al. disclose wherein a number of articles in a stack are set from about 2 to about 6 articles.

With respect to claims 41-42, Loewenthal et al. disclose that each proportional shifter comprises a rod and two blocks.

With respect to claim 43, Loewenthal et al. disclose that two blocks are threaded blocks, each block having a pitch that matches one of the pitches on the threaded rod.

With respect to claim 44, Loewenthal et al. disclose that pitches of two threaded blocks differ by a factor equal to a ratio of two different pre-determined numbers of articles to be removed from said stack.

Art Unit: 3652

With respect to claim 45, Loewenthal et al. disclose moving one block along a rod, thereby adjusting an article rest for the change in the stack height of said set number of articles.

With respect to claim 46, Loewenthal et al. disclose each article gauge comprises two plates, and wherein one plate is attached to one of the two blocks.

With respect to claim 47, Loewenthal et al. disclose a stripping device comprising a rotary material stripper feeder adapted to continuously sweep a set pre-determined number of articles into a wrapper.

With respect to claim 48, Loewenthal et al. disclose a proportional shifter comprising a variable stroke piston contained in an air cylinder.

With respect to claim 49, Loewenthal et al. disclose a distance moved by the variable stroke piston is limited by pre-determined stroke stops.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th., 8:00-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3652

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GWA



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